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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of Advanced	)	CC Docket No. 98-146
Telecommunications Capability to All Americans	)	
In a Reasonable and Timely Fashion, and Possible	)	
Steps to Accelerate Such Deployment Pursuant to	)	
Section 706 of the Telecommunications Act of 1996	)	

COMMENTS OF SPRINT CORPORATION

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Summary

"Advanced telecommunications capability" is best viewed in terms of services available in the marketplace, rather than in terms of a specific technology, and policies which will promote the deployment of advanced technologies on an on-going basis are those which leave decisions about the deployment of such technologies to individual carriers in response to market forces. Regulatory intervention, to the extent required, should focus on ensuring that whatever advanced capabilities are deployed by carriers with bottleneck control are made readily available on a non-discriminatory and unbundled basis to other entities which may wish (or need) to use such capabilities in the provision of other services.

Sprint has long been committed to the deployment of advanced technology throughout its network, and describes herein the state-of-the-art telecommunications capabilities available to its customers. Sprint remains deeply concerned that allowing the creation of "super RBOCs" through the merger of already huge incumbent LECs will discourage the merged companies from deploying advanced telecommunications capability, and will make it easier for the super RBOCs to engage in discriminatory and otherwise anti-competitive activity. Sprint also comments on the need to prohibit any action by ILECs to force customers to use the ILECs' affiliated ISP in order to obtain high speed Internet access. Specifically, the Commission must require ILECs to make xDSL and any advanced service available on an unbundled and nondiscriminatory basis, at reasonable rates, terms and conditions. Finally, Sprint heartily endorses the call for local rate rebalancing, and cautions that the benefits of expanding USF to cover

deployment of advanced technologies have not been shown to exceed the corresponding costs.

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COMMENTS

Sprint Corporation hereby respectfully submits its comments in the above-captioned proceeding in response to the Commission's Notice of Inquiry (NOI) released August 7, 1998 (FCC 98-187). In the NOI, the Commission has sought comment on the status and broadband capabilities of existing and planned networks, and what market and regulatory incentives may exist to encourage the deployment of advanced services to all Americans. Sprint describes below some of the advanced telecommunications technologies it has deployed in its long distance network, and offers its recommendations on policies which can help promote the deployment of advanced technologies and the development of competition in the local market.

As an initial matter, Sprint believes that it is important to view "advanced telecommunications capability" as a dynamic concept. Rather than defining "advanced telecommunications capability" in terms of a specific technology, such as broadband or high speed (indeed, broadband and high speed services have been available for many years), advanced capability is better viewed in terms of state-of-the-art services currently available in the marketplace. This approach will help to encourage the deployment of new "advanced" capabilities after today's advanced capabilities become the norm, and prevent "rolling deregulation" – providing dominant carriers regulatory relief simply because what was formerly considered to be an advanced technology becomes the standard over time.

The competitive marketplace is the only possible standard of reference for determining whether advanced telecommunications capabilities are being deployed on a "reasonable and timely" basis. In a competitive environment, marketplace incentives will ensure both the most efficient allocation of limited resources, and that new technology is deployed at a pace which society is willing to fund. It is difficult to see that a standard of "reasonable and timely" deployment can, as a general matter, have any meaning outside this context.

On the other hand, where bottlenecks still exist – such as in the local loop – the Commission should focus its efforts at removing the bottleneck and allowing a competitive marketplace to develop. Removing the bottleneck may require the deployment of certain capabilities which the monopolist might otherwise decline to implement, or to implement on a far more limited or delayed scale.[1] In a monopoly environment, regulatory intervention is both appropriate and necessary to ensure "reasonable and timely" deployment of advanced technology.

It seems clear from the title of Section 706 ("Advanced Telecommunications Incentives") and this section's emphasis on using any and all "media" and "technology" to provide advanced telecommunications capabilities that Congress intended to foster new telecommunications capabilities on an on-going basis. Therefore, any policies and rules which may eventually be

[1] For example, Commission-mandated deployment of local number portability capability is justified because such capability is crucial to the development of local competition. It was also to encourage the development of local competition that Congress mandated the wholesale discount and availability of unbundled network elements (UNEs).

adopted based on the record in this proceeding and in the related Notice of Proposed Rulemaking[2] should focus on creating a competitive environment which encourages the deployment of advanced technologies even after today's state-of-the-art technologies become standard. Broadly speaking, Sprint believes that policies which best promote advanced technologies on an on-going basis are those which leave decisions about the deployment of new technologies and the provision of advanced services to individual carriers in response to market forces. Regulatory intervention, to the extent required, should focus on ensuring that whatever advanced capabilities are deployed by carriers with bottleneck facilities are made readily available on a non-discriminatory and unbundled basis to other entities which may wish (or need) to use such capabilities in the provision of other services.

A. Incumbent LECs

In the NOI (para. 24), the Commission asks for comment on the effect of mergers and other consolidations on the deployment of advanced telecommunications capability. Sprint is concerned that allowing the creation of "super RBOCs" through the mergers of already huge local carriers (*e.g.*, the proposed Southwestern/Pacific/Nevada Bell mergers with Ameritech and SNET, and the proposed Bell Atlantic/Nynex merger with GTE) will discourage the merged companies from deploying advanced telecommunications capability. With each merger, the individual RBOC eliminates a potential competitor to its existing local exchange operations, and thus eliminates some competitive pressure to deploy advanced technology as a means of

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[2] *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order and Notice of Proposed Rulemaking,* CC Docket No. 98-147, released August 7, 1998 (FCC 98-188) ("*Wireline Order*").

retaining existing local and access service customers.[3] Furthermore, discrimination is more likely when a monopolist does business in a number of markets; the greater the number of markets (in terms of both geography and services provided), the greater the ability and incentive to engage in misconduct. For example, the larger the RBOC, the greater the percentage of an IXC's originating and terminating traffic it will control, and the greater will be the RBOC's ability to engage in discriminatory or predatory conduct. Furthermore, the monopolist can establish a reputation for predation in one market with the effect of deterring entry in all markets, with the costs of discrimination in one market spread among many markets.

The Commission must also remain wary of RBOC promises to deploy advanced telecommunications capability in exchange for forbearance from their resale and UNE obligations and interLATA restrictions. Although the RBOCs are free to offer services such as DSL and to build broadband networks free of the regulatory requirements contained in Sections 251 and 271 of the Act outside their ILEC territories, they have failed to do so. The fact that several RBOCs (Bell Atlantic, US West, Ameritech and Southwestern/Pacific/Nevada Bell) requested that they be allowed to deploy broadband services within their ILEC regions, free of their Section 251 and 271 obligations, would seem to demonstrate their interest in deploying such technologies primarily as a means of protecting their local bottleneck rather than increasing competition. And, the fact that four of the six largest ILECs have offered xDSL service without being deregulated is proof that they have ample incentive to deploy such services under the current regulatory framework.

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[3] In fact, prior to the merger announcements, both GTE and Ameritech had taken steps to begin to offer competitive local services in adjoining RBOC territories (in GTE's case, in Pennsylvania and Virginia, which are served by Bell Atlantic; in Ameritech's case, in each of the five states

Footnote continued on next page

B. IXCs

In the NOI (para. 32), the Commission has requested comment on whether IXCs' facilities constitute advanced telecommunications capability, and what advanced services IXCs now offer or plan to offer. Sprint has deployed state-of-the-art technologies throughout its network (for example, Sprint has an Asynchronous Transfer Mode (ATM) backbone network and coast-to-coast SONET (Synchronous Optical Network) rings), which enable its customers to transmit voice, video and data services of any bandwidth securely, reliably and at high speed.

In June 1998, Sprint announced the introduction of Sprint Integrated On-Demand Network (ION), a service which provides homes and businesses with virtually unlimited bandwidth over a single existing telephone line for simultaneous voice, video and data (fax, Internet access, etc.) services, at speeds up to 100 times faster than today's conventional modems. Sprint ION allows customers to dynamically allocate bandwidth themselves, giving customers unprecedented flexibility to choose how they wish to communicate and allowing them to pay only for what they use rather than having to purchase a set high-bandwidth capacity that often sits idle. Sprint ION's cell-based network technology reduces the network cost to deliver a typical voice call by more than 70 percent. Because Sprint ION does not differentiate between long distance and local telephone service, it will meet the business needs of both the Sprint long distance and CLEC operations. Sprint ION is perhaps a perfect example of what Congress envisioned in Section 706 when it used the term "advanced telecommunications capability."

Sprint ION will first be available late this year to large businesses located in areas served by Sprint's metropolitan broadband networks (BMAN), using T-1 and above special access

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within Southwestern Bell's territory). If the proposed mergers are consummated, these competitive local offerings will presumably be discontinued.

facilities.[4] Sprint ION can also be used by residential and small business customers through high speed digital access such as Digital Subscriber Lines (DSL). While Sprint does intend to deploy the necessary technology to make Sprint ION available to as many customers as possible, the availability of xDSL from incumbent LECs at reasonable rates, terms and conditions would facilitate the more widespread deployment of Sprint ION.

Sprint also was the first carrier committed to deploying Dense Wave Division Multiplexing (DWDM) on nearly 100% of its fiber miles. Dense Wave Division Multiplexing and other fiber optic technologies allow Sprint to dramatically increase the call capacity of existing fiber pairs, while simultaneously improving unit economics. In August 1998, Sprint announced its plans to boost the transmission speed and bandwidth of its Internet backbone from OC-12 (622 megabits per second) to OC-48 (2.5 gigabits per second), the fastest type of backbone service available, using DWDM technology and gigabit switch routers (GSR). Sprint's business plans call for the deployment of DWDM and other fiber optic technologies so that by the year 2000, one pair of Sprint fiber will have the capacity to handle 34 million simultaneous calls, or 17 times today's combined volumes of Sprint, AT&T and MCI, without having to physically construct any new fiber.

While consumers may have experienced some congestion in using the Internet, Sprint is unaware of any data to suggest that such congestion is due to a shortage of Internet backbone (NOI, para. 33). Rather, what congestion has been experienced has occurred in the LEC network or in the ISPs' modem pools,[5] and the Commission's attention here is more appropriately

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[4] Sprint's BMAN capability allows Sprint ION to pass within proximity of 70% of large businesses.

[5] *See, e.g.*, "Customer Surge Slows AOL Service," *Washington Post*, December 20, 1996; "America Online Passes 8 Million Member Mark and Takes Additional Measures to Address

Footnote continued on next page

focused on ensuring that interconnection to the local loop and provision of xDSL service are available at just and reasonable rates, terms and conditions. While supply and demand may not match perfectly, to the extent that there might be some shortage of Internet backbone facilities, such shortages are best addressed by market forces. The availability of technology such as DWDM and GSRs, and the willingness of carriers such as Sprint to deploy such technology in their networks, is evidence that the market is providing sufficient incentive to spur investment in these advanced technologies.

C. ISPs

In the NOI (para. 38), the Commission has asked for comment on how it "can ensure that customers are free to choose their own ISPs," and what, if anything, it should do "to promote provisioning of xDSL by incumbent LECs that does not bundle and does not direct customers to the incumbent LECs' affiliated ISPs." Sprint believes that in order to foster the continued development of competition in the ISP market, customers must indeed remain "free to choose their own ISPs," and that any action by the ILECs to force customers to use the ILEC ISP in order to obtain high speed Internet access (through the xDSL facility) should be prohibited by the Commission.

Because the ILECs retain virtual monopoly control over the local loop, customers who use switched access for their Internet connection will rely largely upon the ILECs' xDSL offerings to obtain high speed Internet access. ILECs should be required to tariff xDSL as a stand-alone offering, and not be allowed to bundle xDSL access with the ILECs' own ISP

Extraordinary Demand," AOL press release dated January 16, 1996; comments of Pacific Bell in RM-8775 (Provision of Interstate and International Interexchange Telecommunications Service via the Internet by Non-Tariffed, Uncertified Entities), May 8, 1996, p. 11 (Pacific Bell

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service.[6] Bundling xDSL access with the ILECs' own ISP offering unreasonably leverages the ILECs' virtual monopoly in the provision of local loops to give it an advantage in the more competitive ISP market.

The BOCs' DSL offerings also should be available for resale to all carriers (both those affiliated and those not affiliated with the ILEC) at the same cost-based rates, terms and conditions. Parity in provision of xDSL will help to ensure that independent ISPs are not placed at an unreasonable competitive disadvantage vis-a-vis the affiliated ISP by virtue of the ILEC's historic monopoly. Indeed, in the companion order on advanced telecommunications capability, the Commission declared that "incumbent LECs are required, pursuant to section 251(c)(3) of the Act, to provide unbundled loops capable of transporting high speed digital signals," and that "competitive LECs must be able to obtain access to incumbent LEC xDSL-capable loops on an unbundled and nondiscriminatory basis."[7] The BOCs should not be allowed to evade their obligation to provide DSL or other services at wholesale rates and as an unbundled network element by providing such services through a subsidiary.

D. The Last Hundred Feet

The Commission has requested comment (NOI, para. 53) about the "'last hundred feet' for advanced telecommunications capability, such as inside wire within retail customers' premises or wireless local area networks, and demarcation points where inside wire ends and a service provider's network begins." To ensure that consumers have access to their telecommunications carrier of choice, Sprint believes that owners of office buildings, multiple

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"experienced high blockage of interoffice calls in the late afternoon and throughout the evening" when an enhanced service provider established a service node in a large multi-line hunt group).

[6] Similarly, ILECs should not be allowed to bundle xDSL with ATM, frame relay, or other access services.

dwelling units and trailer parks, as well as subdivision developers, should be encouraged to provide access to competitive LECs on the same rates, terms, and conditions as are available to incumbent LECs. Although the Commission lacks jurisdiction over these private property owners, it can and should adopt rules prohibiting regulated service providers from entering into exclusive arrangements with building owners, developers, etc., since such agreements inhibit the development of local competition.

At least two states have or are considering the issue of exclusive access arrangements between telecommunications carriers and private building owners. The Ohio PUC concluded that:

> ...there is a rebuttable presumption that any arrangements whereby telecommunications carriers are provided exclusive use of private building riser space, conduit, and/or closet space is anti-competitive and unlawful. This being the case, the Commission reserves the right, should it be brought to our attention, to require any or all such future arrangements between public utilities and private landowners to be submitted to us for our review and approval...prior to taking effect.

Ohio PUC, *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues,* Case No. 95-845-TP-COI, Finding and Order, Appendix A, pp. 71-72, released Feb. 20, 1997.

Florida also has a proceeding open to investigate whether telecommunications companies should have direct access to customers in multi-tenant environments.[8] As Sprint explained in its comments in that proceeding, if carriers are to compete for end user customers on a competitively neutral basis, all certificated carriers must have non-discriminatory equal access on or at the premises of a multi-tenant environment.

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[7] *Wireline Order*, para. 52.

[8] Florida Public Service Commission, Access by Telecommunications Companies to Customers in Multi-Tenant Environments, Docket No. 980000B-SP.

E. Relationship Between Section 706 and Section 254

The Commission has asked for comment (NOI, para. 72) on the relationship between Sections 706 and 254 (universal service). It cites an analysis by APT, which found that in states which have instituted reforms to bring the rates for residential local service closer to the cost of providing such service, competitors have begun to enter the residential market.

Sprint heartily endorses APT's call for local rate rebalancing, since cost-based rates are essential for local competition. By adjusting local residential service to more closely reflect its cost, LECs would be able to reduce access rates to reflect the economic cost of providing that service as well.[9] Such rate rebalancing has the effect of stimulating competition in the residential local services market (CLECs find it more economical to provide residential service, and to deploy advanced technologies to their residential customers); reducing long distance rates (because IXCs pay lower, more cost-based access rates); and further eliminating the remaining universal service subsidies implicit in interstate access charges, consistent with the Act's mandate.

As more schools, libraries and rural health care facilities obtain Internet access through the discounted USF programs, it would seem reasonable to assume that demand for high speed Internet access will increase, and that LECs may therefore have a greater economic incentive to deploy xDSL technology to the lines serving those schools, libraries and rural health care facilities. However, Sprint believes that at this point, the market, rather than a regulatory entity, should determine the rate at which xDSL technology is deployed. Moreover, it is still far too

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[9] Higher local service rates will be offset by lower long distance rates. Low income subscribers also benefit from the increased support recently adopted by the Commission in the universal service proceeding (expanded Lifeline and Link Up programs, prohibition on disconnection of

Footnote continued on next page

premature to conclude that universal service support for xDSL or advanced technologies is in the public interest. Every expansion to any universal service program must be paid for by telecommunications carriers (in particular by interexchange carrier contributors, who pay not only their own direct USF assessments, but also well over 90% of LEC USF assessments which the LECs recover in the form of higher access rates charged to IXCs). There is as yet no evidence that the benefits of expanding USF to cover deployment of advanced technologies is greater than the corresponding costs.

Respectfully submitted,

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local service for non-payment of toll calls, support for voluntary toll blocking and toll limitation, etc.).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 14th day of September, 1998 to the below-listed parties:

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